IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.55406 of 2006
JEEBACH JHA & ANR
Versus
THE STATE OF BIHAR & ORS
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8. 13.5.2008. This application under Section 482 Cr.P.C. has been filed to quash the order dated 7.9.2006 passed by learned Additional District & Sessions Judge,(F.T.C. No. 3), Darbhanga in Criminal Revision No. 285 of 2004 thereby learned court has upheld the order dated 23.6.2004 passed by Sub Divisional Magistrate, Biraul in M. R. No. 366/01 under Section 147 Cr.P.C. whereby learned Magistrate has directed the petitioners to remove the structure standing over the alleged passage bearing Plot No. 2040 (C.S.) under Khata No. 486 in village Lagma, P. S. Ghanshyampur, District Darbhanga.

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Heard learned counsel for both the parties.

Respondent no. 2 Rabindra Nath Jha filed a petition dated 21.7.2001 before learned Sub Divisional Magistrate, Biraul for initiation of proceeding under Section 147 Cr.P.C. over 3 decimals of land out of Plot no. 2040 on the ground that the same was being used for ingress and egress since long. Ultimately on the basis of report submitted by the Anchal Officer the proceeding was initiated. Petitioners appeared and put his written statement denying the existence of passage or easementary right of respondents. Both the parties produced oral as well as documentary evidence. Ultimately, learned S. D. M. vide order dated 23.6.2004 upheld the right of passage/easementary of respondent over the land in question

and directed petitioners/opposite parties to remove the structure standing over the disputed land.

The petitioners preferred revision before the District & Sessions Judge against the order of S.D.M. The Criminal Revision having no. 285 of 2004 was heard by F. T. C, III and ultimately dismissed vide order dated 7.9.2006 upholding the order of learned S.D. M.

In course of the submission, learned counsel for the petitioners challenged the order in question mainly on the ground of pendency of parallel proceeding pending between the parties over the same piece of land under Section 145 Cr.P.C.

There is mark distinction between the proceedings under Section 145 and 147 Cr.P.C. Proceeding under Section 145 Cr.P.C. is initiated to decide the actual physical possession over the land whereas Section 147 Cr.P.C. applies to the right as to the use of land and easement. In the present case, the claim of respondent is a right of easement and not the claim of actual physical possession over the land in question. Therefore, pendency of any other proceeding for actual physical possession shall not affect the proceeding under Section 147 Cr.P.C. On the contrary it puts questions on the legality of the proceeding under Section 145 Cr.P.C.

So far as the merit of the case is concerned, there is a concurrent finding of two courts regarding existence of right of easement in favour of respondent. There is no perversity in the

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finding of the Courts below. In a proceeding like this, it would not be appropriate to interfere in the concurrent findings of two courts below. The petitioners have remedy to move before Civil Court for appropriate remedy.

Under the facts and circumstances, this application is, hereby, rejected.

kanchan **(Ghanshyam Prasad, J.)**

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